IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8634 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALJIBHAI RANCHHODBHAI PARMAR

Versus

DISTRICT SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 8634 of 2001

MR BB NAIK for Petitioner No. 1

MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 11/03/2004

ORAL JUDGEMENT

The present petition is filed challenging the

order dated 3rd September/ October 2001, whereby the petitioner is dismissed from service under Rule 3 of the Bombay Police (Punishment and Appeal) Rules, 1956, by the Superintendent of Police, Sabarkanatha at Himatnagar. The facts are that while the petitioner was serving as Unarmed Head Constable in Talod Police Station and was in-charge of Harsol Outpost, which is under the control of Talod Police Station, in 1997, a complaint was filed by the Auditor of the Cooperation Department in the office of the District Registrar, Cooperative Societies, Sabarkantha against one Somsinh Babsinh Makwana of Village Lavari, Taluka Prantij for offence under section 408 of the Indian Penal Code, which was registered with Talod Police Station being C.R. No.I-153 of 1997. The said complaint was handed over to the petitioner for investigation and it is alleged that the petitioner visited the premises of the cooperative society at Village Lavari and seized record of the cooperative society and called the accused Somsinh Babsinh Makwana for interrogation. It is also alleged that the petitioner put the accused in lock up without effecting arrest of the accused and when one Kesrisinh Hemtusinh Makwana and Deepsinh Magansinh Chauhan met the petitioner and asked him to find out some solution to the problem. He demanded a sum of Rs.5000/-, but then finally agreed for a sum of Rs.1000/-. Accused, Somsinh Babsinh Makwana was allowed to go with an instruction to come with the said amount. It is further alleged against the petitioner that said Shri Somsinh went to the office of the Anti Corruption Bureau (ACB) at Himatnagar and filed a complaint. On the basis of that a trap was arranged, but then the said trap was not successful.

2. The petitioner was served with charge sheet dated 02.09.1998 alleging, inter alia, that the petitioner indulged in an act of accepting bribe. After preliminary inquiry, a regular departmental inquiry was ordered. The petitioner filed his reply to the said show cause notice in detail on 12.02.1999, a copy of which is at Annexure 'B' to this petition. The petitioner in his reply has explained evidence of all the persons who were cited as witness in the charge sheet.

3. The inquiry officer has filed his report dated 24.05.1999 wherein after reproducing the evidence of the witnesses has stated in the concluding para that, 'from the statement of the Police Sub Inspector, Shri J.K. Rathod, it is clear that there was a complaint against Somsinh Babsinh Parmar for misappropriation and that on 16.12.1997 the accused Somsinh was placed in lock up and

that the said fact is not mentioned in the case diary'. Relying on that the Inquiry Officer has stated that there is sufficient reason to believe that on the relevant day the petitioner had called Somsinh and in the presence of the witnesses had put the accused-Somsinh in lock up and by misusing his status of Jamadar demanded a sum of Rs.5000/-, for releasing the accused from the lock up, made the accused to promise to pay a sum of Rs.1000/-, has thus indulged in the activity of accepting bribe, remained negligent in his duties, caused mental harassment to the accused. The Inquiry Officer has further recorded that when the accused himself has approached the office of the Anti Corruption Bureau and has got arranged a trap there is no reason for not believing that the petitioner had not indulged in the activity of accepting bribe. It is thereafter, that the Inquiry Officer had made a sweeping statement that on the basis of the statement recorded in the preliminary inquiry and on the basis of the documentary evidence led in the departmental inquiry (regular) the guilt of the petitioner is established.

4. After the aforesaid report of the Inquiry Officer was submitted the petitioner was issued second Show Cause Notice dated 7th May/June 2000, a copy of which is at Annexure 'D' to which the petitioner filed reply dated 13.06.2000. It is after taking into consideration the same, the order impugned in this petition is passed.

5. Mr.Naik, the learned advocate appearing for the petitioner emphatically submitted that this is a case of no evidence and to substantiate the same Mr.Naik invited attention of the Court to the Inquiry Officer's report wherein he has recorded the gist of the evidence rendered by each of the witnesses before him. The first witness is the accused-Somsingh Babsinh Makwana. This witness has stated in clear terms that when the petitioner Valjibhai visited Village Lavari to investigate the complaint of misappropriation of Rs.23,000/-, he was not present at the village. Therefore, the petitioner had informed the society (Milk Cooperative Society) to ask the deponent (Somsinh) to report to Harsol Outpost. On 16.12.1997 the deponent had visited Harsol Outpost where the petitioner was sitting and from there he was asked by Jamadar to accompany him to Talod Police Station, where (Talod Police Station) the deponent was sitting outside. It is then deposed that while he was sitting outside one person came and told the deponent that if the deponent pays a sum of Rs.1000/-, that person will see that the matter is over. That person also told the deponent that Jamadar had asked that person to convey this to the

deponent. Thereafter, the accused (Somsinh) left Harsol Outpost. It is then deposed that as the accused could not arrange for the amount, he was confused and therefore, he went to the office of the Anti Corruption Department at Himatnagar and filed a complaint. The statement proceeds further. What is required to be noted is that this witness (accused) has not stated before the Inquiry Officer that he (the accused) was ever put in lock up, that Jamadar had demanded a sum of Rs.5000/-, to release him from the lock up and thereafter it was agreed that the accused will pay a sum of Rs.1000/-, and on a promise being made, the accused was released from the lock up.

6. The next witness is one Gulshanbhai Gulambhai Dabhi along with one Kalidas Kodarbhai Bhabhi, both are Panch witnesses of ACB trap, which are not very material for the purpose of the controversy involved in this case. Then comes witness, Kesrisinh Hemtusinh Makwana, who according to the charge sheet is one who met the petitioner along with Deepsinh Magansinh Chauhan and asked the petitioner to find out a solution to the problem, and from whom an amount of Rs.5000/-, was demanded but then finally a sum of Rs.1000/-, was agreed upon. This witness has deposed before the Inquiry Officer to the effect that a complaint about misappropriation of a sum of Rs.34,000/-, was filed in Talod Police Station. The Jamadar of Harsol Outpost had come to investigate and had seized the Books of Accounts of the Dairy and told Somsinh that he should come to the Police Station tomorrow. Now what follows is important. He has deposed that, 'on the next day, we had gone to Talod Police Station. Before that we had gone to Harsol Outpost where Jamadar, Valji had told to arrange for some amount. After that we had returned. Thereafter without informing me the accused had gone to Himatnagar in connection with payment of amount and I do not know as to what arrangement Somsinh (the accused) had made.' It is then deposed that,

> "It was subsequently learnt that the brother in law (of the accused), Jagdishsinh Magansinh, was also to be arrested, but then he was produced in the Court and was released."

What follows in the cross examination is important, because this very witness having deposed in so many words that before going to Talod Police Station, he had gone to Harsol Outpost and there the petitioner (Jamadar, Valjibhai) had asked him to arrange for some amount. He has denied this fact and has stated that it was not

Jamadar, Valjibhai but some third person had demanded this amount and the deponent does not know the name or whereabouts of that person.

7. The next witness is Deepsinh Magansinh Chauhan, who has deposed before the Inquiry Officer that,

> "We had gone to Talod and there (not at Harsol Outpost) we had met Valjibhai (petitioner). Thereafter, what had transpired, I do not know. This witness was declared hostile."

Now to analyse and appreciate the material on record of this case it is to be noted that in the charge sheet dated 02.09.1998 which is mentioned to be dated 02.01.1998 in para 5 of the memo of the petition, it is stated that,

> "You, the Armed Head Constable, Valjibhai Ranchhodbhai, Buckle No.897, while on duty at Harsol Outpost of Talad Police Station were investigating an offence registered as F.I.R. No.153 of 1997 at Talod Police Station against Somsinh Babarsinh Makwana under section 408 of the Indian Penal Code, the accused Somsinh had met you on 16.12.1997 at Talod Police Station. You, without causing arrest had put him in lock up. One Kesrisinh Hemtusinh and another Deepsinh Magansinh of Village Lavari had met you and requested you to find a way out. You had demanded a sum of Rs.5000/-, which was ultimately settled at Rs.1000/-. You had released the accused, Somsinh from the lock up and had asked to come with the amount. In this regard Somsinh filed a complaint with the office of the Anti Corruption Bureau, Himatnagar. A trap was arranged which had remained unsuccessful."

The accused Somsinh and two other persons named in the charge sheet are examined. Interestingly, none of these three persons have stuck to their averments forming the allegations against the petitioner. Therefore, an important question arises for consideration of this court as to on what material the Inquiry Officer has concluded that the charge levelled against the petitioner is established.

8. Mr.Naik, the learned advocate for the petitioner emphatically submitted that this is a case of no evidence against which Mr.M.S. Rao, the learned Assistant Government Pleader submitted that standard of proof in a

departmental inquiry is not as strict as it is in a criminal proceedings. He submitted that therefore, the test of 'preponderance of probabilities' is required to be applied in the matter of Departmental Inquiries. TRUE, either of the standard can be applied, provided there is 'any' material against the accused. In the present case, out of three persons on the basis of whose averments a charge sheet is issued to the petitioner, none has supported the case before the Inquiry Officer. To say that they have turned hostile or that they have been bought over is no ground on which the Inquiry Officer's report and findings can be upheld by this Court. It is true that the standard of proof required in a departmental inquiry is lenient than the standard of proof in a criminal proceeding, but then there has to be some material. In absence of any material, the Inquiry Officer could not have recorded a finding just by making a sweeping statement to the effect that on the basis of the statement recorded in a preliminary inquiry and on the basis of the oral and documentary evidence led before him, he has reason to believe that the charge levelled against the petitioner is established. Mr.M.S. Rao, the learned Assistant Government Pleader has no other material than the report of the Inquiry Officer to persuade this Court to hold that the petitioner was guilty of the charge levelled against him. In fact, there is no evidence on which the Inquiry Officer could have relied upon. Mr.Naik, the learned advocate for the petitioner made available the exact text of the deposition of Kesrisinh Hemtusinh Makwana and other statements for perusal of this Court. The same were examined by Mr.M.S. Rao, the learned Assistant Government Pleader also to satisfy himself that no part/ portion is going unnoticed.

9. Mr.Rao, the learned Assistant Government Pleader next submitted that in the order impugned it was mentioned that the petitioner if desirous of filing an appeal shall file the same before the Director General of Police within 60 days of the receipt of this order. He submitted that the petitioner without availing of the departmental appeal has directly approached to this Court. Therefore, this petition should not be entertained on that ground.

10. Mr.Naik, the learned advocate for the petitioner submitted that right at initial stage this Court after taking into consideration the nature of the matter, issued notice for 'final disposal'. Thereafter, when the matter was before the Court on 06.03.2002, the Court did consider the aspect of 'alternative remedy' issued 'rule'

making it returnable in the first week of July 2002. Mr.Naik submitted that once the Court entertains a petition after being alive to the aspect of alternative remedy, more particularly, when that fact is mentioned in the order under challenge, there is no question of refusing relief to the petitioner on the ground of availability of alternative remedy. Having found the substance in the submission of Mr.Naik, the contention raised by Mr.Rao, the learned Assistant Government Pleader regarding availability of alternative remedy is not accepted.

11. Mr.Rao, the learned Assistant Government Pleader next submitted that the findings of the Inquiry Officer duly accepted by the disciplinary authority unless are shown to be perverse no indulgence at the hands of this Court is warranted. In view of the aforesaid discussion without branding the findings of Inquiry Officer as 'perverse' as the findings recorded by the Inquiry Officer are not supported by the evidence on record of the case, the petition is required to be allowed. The evidence of the accused, Somsinh and other two witnesses, Kesrisinh and Deepsinh scrutinised by this Court, do not inspire confidence and therefore, petitioner cannot be held guilty of the charge levelled against him on the basis of such evidence.

12. Mr.Naik is right in his submitted that relying only on the statements of the witnesses recorded in the preliminary inquiry, to which they have not rendered any support worth the name before the Inquiry Officer during regular departmental inquiry, if the petitioner is to be held guilty and is to be punished with penalty of 'economic death', then holding of regular departmental inquiry is required to be abandoned. This Court is aware that a judicial notice can be taken of the fact that many a time it happens that witnesses are bought over but then in this case it is the accused himself who has not supported his own case and has not stuck to his earlier statements. Hence petitioner cannot be held guilty of the charge levelled against him.

13. In totality of the case except some so called statements in the preliminary inquiry and the complaint before the Anti Corruption Bureau, on the basis of which a trap was laid, which was not successful, there is no material against the petitioner. This Court therefore, holds that the findings recorded by the Inquiry Officer against the petitioner are not supported by evidence and therefore, could not have been relied upon and acted upon by the disciplinary authority.

14. In the result this petition succeeds. The impugned order is hereby quashed and set aside and the respondents are directed to reinstate the petitioner in service with all consequential benefits as if the impugned order was never passed within eight weeks from the date of the receipt of the writ of this Court. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

karim